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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/620,391	07/16/2003	Chris Viennau	G&C 30566.291-US-01	9547
55895 7590 05/15/2007 GATES & COOPER LLP HOWARD HUGHES CENTER 6701 CENTER DRIVE WEST, SUITE 1050 LOS ANGELES, CA 90045			EXAMINER TERMANINI, SAMIR	
			ART UNIT 2178	PAPER NUMBER
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/620,391

Applicant(s)

VIENNEAU ET AL.

Examiner

Samir Termanini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
  - 2) ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 4/18/07.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### **BACKGROUND**

1. This FINAL Office Action is responsive to the following communications:  
Amendment filed on 2/27/07 .
2. Claims 1–18 are pending in this case. Applicant amended claims 1, 10, 13, and 15, where claims: 1, 10, 13, and 15 are in independent form.
3. Applicants amended the Abstract in response to the Objection cited by the Examiner in the previous Office Action (dated 11/27/06) with regard to language. The objection is withdrawn in view of the amendment.
4. Arguments concerning the Examiner's rejections of claims 1–3 and 5–18, made under 35 U.S.C. §102(e) in the previous Office Action (dated 11/27/06) have been fully considered but they are not persuasive for the reasons detailed hereunder.
5. Arguments concerning the Examiner's rejection of claim 4, made under 35 U.S.C. §103(a) in the previous Office Action (dated 11/17/06) have been fully considered but they are not persuasive reasons detailed hereunder.

### **CLAIM REJECTIONS - 35 U.S.C. § 102**

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. §102 that form the basis for the rejections under this section made in this Office action:

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. **Claims 1 -3 and 5-18** are rejected under 35 U.S.C. § 102(e) as being anticipated by *Kurtenbach*, US Pat. No. 6,618,063 (hereinafter "*Kurtenbach '063*").

As to independent **claim 1**, *Kurtenbach '063* teaches an apparatus for processing image data ("production operations...such as CAD/CAM and animation...", col. 2, lines 58-60; *see also* "ALIAS V6," the image data processing program, col. 4, line 41), comprising processing means (i.e. "computer 20," col. 2, line 49), storage means (i.e. "storage media" col. 2, line 53), display means (i.e. "display 22," col. 2, line 47) and stylus-like manually operable input means (i.e. "pen," col. 2, line 64), wherein the processing means is configured to perform functions upon image data in response to an operator manually selecting a function from a function menu ("...selected by manipulating the pointing device 26...", col. 3, line 19); the processing means responds to a first user-generated input command so as to display a plurality of function gates at a cursor position ("A user activates the selection indicator [where a] radial menu 40, such as illustrated in FIG. 3, then appears directly under the tip of the pen 52...", col. 3, lines 44-49); wherein the plurality of function gates displayed are relevant to a current application being performed by the operator ("The invention can also be used with any type of menu in a variety of contexts, such as a tool pallet, pulldown menu and object

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hot spots." col. 8, lines 34-35); movement of the stylus-like manually operable input means so as to move the cursor ("A user then highlights an item by keeping the pen pressed and making a stroke 42 towards the desired item." col. 3, lines 49-51) through one of the function gates results in a related menu being displayed ("...the submenu is displayed with the center 48 of the new menu under the pen 52," col. , lines 60-63; *see also* FIG. 4) and manual selection of a function from the displayed menu results in the selected function ("The user then continues, from the new center 48, selecting the newly displayed sub-menu by providing another stroke 50 with the pen 52," col. 3, lines 63-66) being performed upon the image data (i.e. execute the command associated with series of menu choices, element 198, Fig. 11).

As to dependent **claim 2**, *Kurtenbach '063* further teaches the apparatus according to claim 1, wherein the manually operable input means is a stylus and a touch-tablet combination ("The display 22 and pointing device 26 can also be combined into a single device, such as touch sensitive screen." col. 2, lines 66-67).

As to dependent **claim 3**, *Kurtenbach '063* further teaches the apparatus according to claim 1, wherein a first user-generated input command is generated in response to keyboard operation ("selection is made by depressing (or releasing) a button...in a separate interface device, such as the keyboard 24." col. 3, lines 19-23).

As to dependent **claim 5**, *Kurtenbach '063* further teaches the apparatus according to claim 1, wherein four function gates (*see* Fig. 3 - showing four function gates) form a substantially circular device ("Marking menus is a pop up menu

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technology that displays menu items in a circle, around the cursor...," col. 1, lines 39-40)(emphasis added).

As to dependent **claim 6**, *Kurtenbach '063* further teaches the apparatus according to claim 1, wherein six function gates (see Fig. 4 - showing six function gates) form a substantially circular device ("...menu items in a circle, around the cursor...," col. 1, lines 39-40)(emphasis added).

As to dependent **claim 7**, *Kurtenbach '063* further teaches the apparatus according to claim 1, wherein the function gates form a substantially quadrilateral device (see Fig. 3 - showing a four-sided device also known as a 'cyclic quadrilateral').

As to dependent **claims 8-9**, *Kurtenbach '063* further teaches the apparatus according to claim 1, wherein the menus relate to functions applicable to image data processing, compositing, and editing image frames ("production operations...such as CAD/CAM and animation...," col. 2, lines 58-60; see also "ALIAS V6," the image data processing program, col. 4, line 41).

As to independent **claim 10**, *Kurtenbach '063* teaches a method of selecting a function ("menu selection operation," col. 3, line 43) via a graphical user interface for receiving input commands ("selected by manipulating the pointing device 26," col. 3, line 19), wherein in response to a first input command, a selection device is displayed at a cursor position ("A user activates the selection indicator [and then a] radial menu 40, such as illustrated in FIG. 3, then appears directly under the tip of the pen 52," col. 3, lines 44-49); the selection device identifies a plurality of function types ("particular

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item," col. 3, line 56) at selected positions ("selected regions 72," col. 5, line 43), each having an associated displayable menu ("submenu," col. 3, line 62) wherein the plurality of function gates displayed are relevant to a current application being performed by the operator ("The invention can also be used with any type of menu in a variety of contexts, such as a tool pallet, pulldown menu and object hot spots." col. 8, lines 34-35); in response to a second input command (second "moving [of] the pointer," col. 3, lines 61-62), a cursor is moved over one of the positions ("...position the pointer directly over the label for the item to be selected." col. 6, lines 1-2); and having moved the cursor over a function type position the menu associated with the position over which the cursor has been moved is displayed ("submenu is displayed," col. 3, line 62).

As to dependent **claim 11**, *Kurtenbach '063* further teaches the method according to claim 10, wherein a first selection device or a second selection device is displayed dependent upon the current state of operations being performed by an operator (e.g. "contexts, such as tool pallet, pulldown menu and object hot spots," col. 8, lines 34-35).

As to dependent **claim 12**, *Kurtenbach '063* further teaches the method according to claim 11, wherein a related device is displayed when the operator is using a schematic view ("FIG. 6 shows a combined radial marker and linear menu," col. 2, lines 33-34) and a player-related device is displayed when an operator is viewing a player view (FIG. 5 depicts selection using a marking pattern without producing a display, col. 2, lines 31-32).

As to independent **claim 13**, *Kurtenbach '063* teaches a method of supplying input data to a computer system, comprising the steps of issuing a first input command to call up a graphical user interface ("A user activates the selection indicator [and then a] radial menu 40, such as illustrated in FIG. 3, then appears directly under the tip of the pen 52," col. 3, lines 44-49) in which a plurality of gates surround a cursor position (e.g. *see* Fig. 4) wherein the plurality of function gates displayed are relevant to a current application being performed by the operator ("The invention can also be used with any type of menu in a variety of contexts, such as a tool pallet, pulldown menu and object hot spots." col. 8, lines 34-35); and in response to a second input command ("another stroke 50," col. 3, lines 63-66), moving the cursor through one of the gates (pen 52 moves through the gate, Fig. 4); and supplying input data determined by which of the gates the cursor is moved through ("Lifting the pen 52," col. 3, line 66).

As to dependent **claim 14**, *Kurtenbach '063* further teaches a method according to claim 13, wherein four gates are displayed in the graphical user interface in a substantially circular configuration (*see* Fig. 3).

As to independent **claim 15**, *Kurtenbach '063* teaches a computer-readable medium having computer-readable instructions executable by a computer ("hard disk or a floppy disk on which the process discussed herein is stored," col. 2, lines 52-54) such that, when executing the instructions, the computer will perform the steps of: responding to a first user-generated input command ("A user activates the selection indicator," col. 3, lines 44-49) so as to display a plurality of function gates at a cursor position ("[and then a] radial menu 40, such as illustrated in FIG. 3, then appears



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directly under the tip of the pen 52," col. 3, lines 44-49) wherein the plurality of function gates displayed are relevant to a current application being performed by the operator ("The invention can also be used with any type of menu in a variety of contexts, such as a tool pallet, pulldown menu and object hot spots." col. 8, lines 34-35); responding to movement of manually operable input means so as to move the cursor through one of the function gates and displaying a menu in response to the cursor movement ("The user then continues, from the new center 48, selecting the newly displayed sub-menu by providing another stroke 50 with the pen 52," col. 3, lines 63-66); and responding to manual selection of a function from the displayed menu so as to perform the function ("Lifting the pen 52 will cause the current series of highlighted items to be selected." col. 3, lines 66-67) upon image data ("production operations....such as CAD/CAM and animation operations," col. 2, lines 58-60; *see also* "ALIAS V6" col. 4, line 41).

As to dependent **claim 16**, *Kurtenbach '063* further teaches the computer-readable medium having computer-readable instructions according to claim 15, wherein the cursor moves thru one of the function gates (*see* cursor moving through the gate, Fig. 4) in response to manual operation of a stylus upon a touch-tablet ("The display 22 and pointing device 26 can also be combined into a single device, such as touch sensitive screen." col. 2, lines 66-67).

As to dependent **claim 17**, the only difference between claim 14 and this claim, is that the latter is directed toward a product, defined by the process of the former.

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Accordingly, this claim is being rejected for the same reasons set forth in the treatment of claim 14.

As to dependent **claim 18**, *Kurtenbach '063* further teaches the computer-readable medium having computer-readable instructions according to claim 15, such that when executing the instructions a computer will display a menu at a screen position related to the relative positions of its respective gate ("location around the radial menu that is desired depending on where the radial menu actually pops up," col. 8, lines 15-16).

### CLAIM REJECTIONS - 35 U.S.C. § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. **Claim 4** is rejected under 35 U.S.C. 103(a) as being unpatentable over *Kurtenbach* US Pat. No. 6,618,063 (hereinafter "*Kurtenbach '063*") in view of *Kurtenbach et al.*, US Pat. No. 6,414,700; (hereinafter "*Kurtenbach '700*").

As to dependent **claim 4**, *Kurtenbach '063* further teaches the apparatus according claim 3, wherein a first user-generated input command is generated in response to keyboard operation ("selection is made by depressing (or releasing) a button...in a separate interface device, such as the keyboard 24." col. 3, lines 19-23).

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*Kurtenbach '063* does not show the keyboard operation to specifically involve the activation of a 'spacebar'. However, *Kurtenbach '700* teaches a first user-generated input command is generated in response to keyboard operation ("To display the interface 10, the user holds down a key on the key board, preferably [w]hen the cursor is in a display window," col. 4, lines 1-4). It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to have used the spacebar in *Kurtenbach '700* with menu *Kurtenbach '063* because both disclosures: (1) are in the same field of endeavor of graphical user interfaces that present users with a large number of menu items (see *Kurtenbach '700* at col. 1, lines 7-9; see *Kurtenbach '063* at col. 1, lines 26-28); (2) are directed to the same problem of providing radial marking (or "pie") menus (see *Kurtenbach '700* at col. 3, line 58; see *Kurtenbach '063* at col. 1, line 11); (2) and (3) *Kurtenbach '700* expressly suggests the desirability in using marking (or "pie") menus in that they provide "a method for creating a visually pleasing layout...", (col. 3, lines 38-40) and further, that they should be presented *via* a first user-generated input command being "preferably the space-bar" (*Kurtenbach '700* at col. 4, lines 1-4).

### RESPONSE TO ARGUMENTS

10. Applicant arguments, see p. 8, filed 2/27/07, with respect to the Objection cited by the Examiner in the previous Office Action (dated 11/27/06), to the Abstract with regard to an embedded hyperlink have been fully considered and are persuasive. Accordingly, the Objection to the Abstract has been withdrawn.

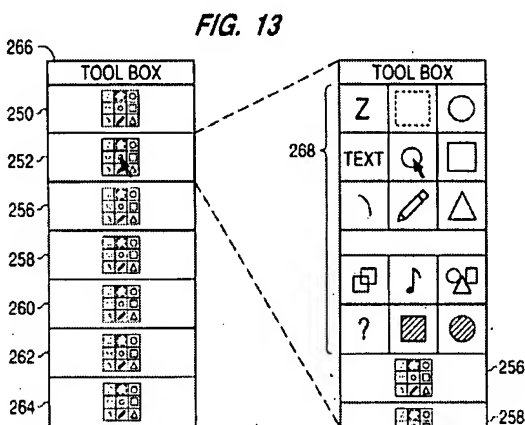
11. Applicant arguments, see p. 10, filed 2/27/07, with respect to the Rejections under 35 U.S.C. §102(e) cited by the Examiner in the previous Office Action (dated 11/27/06), to claims 1, 10, 13, and 15 have been fully considered but are not persuasive.

Applicants argue "Item selection in the linear portion is performed by location selection using a pointing device. Item selection in the marker portion is determined by the pattern of a stroke made by the pointing device with the system ignoring linear menu items across which the stroke completely passes. (See Abstract)." In response to applicant's argument it is noted that the features upon which applicant directs attention to within the prior art are not recited in the rejected claims.

Applicants argue "there is no teaching, explicit or implicit, suggestion, or description of displaying gates based on their relevance to a current application being performed by the operator." In response to applicant's argument attention is directed to the following teachings in *Kurtenbach*: "The invention can also be used with any type of menu in a variety of contexts, such as a tool pallet, pulldown menu and object hot spots." (col. 8, lines 34-35). The applicant is directed to figure 13 of *Kurtenbach* '063: this is an application-relevant menu. Applicant has failed to rebut the prima facie case of anticipation in view of the express depiction of application-relevant menu in *Kurtenbach* '063.

Applicants argue "however, the dependence or relationship between the current application and the particular menu that is displayed is not described in *Kurtenbach*."

In response to applicant's argument it is pointed out that arguing unclaimed limitations is not persuasive in overcoming a case of prima facie anticipation. Applicant has not claimed the details of the dependence or relationship between the current application and the particular menu. Applicant only has claimed that it is "relevant to a current application". The following figure from *Kurtenbach* is clearly relevant to the current application:



12. Applicant arguments, see p. 10, filed 2/27/07, with respect to limitations in claim 12 concerning capabilities of the menu, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

### CONCLUSION

13. All prior art made of record in this Office Action or as cited on form PTO-892 notwithstanding being relied upon, is considered pertinent to applicant's disclosure.

Therefore, Applicant is required under 37 CFR §1.111(c) to consider these references fully when responding to this Office Action.

- [1] *Moran et al.* (US Pat. No. 5,500,935 A) for teaching an apparatus and method for translating graphic objects and commands with direct touch input in a touch based input system.
- [2] *Bier et al.* (US Pat. No. 5,581,670 A) for teaching an user interface having movable sheet with click-through tools..
- [3] *Kurtenbach* (US Pat. No. 5,689,667 A) for teaching a method and system of controlling menus with radial and linear portions.
- [4] *Atkinson* (US Pat. No. 5,701,424 A) for teaching Palladian menus.
- [5] *Blades* (US Pat. No. 5,706,448 A) for teaching a method and system for efficiently managing a plurality of displayable objects within a display.
- [6] *Smith* (US Pat. No. 5,721,853 A) for teaching a spot interface comprises an active region represented by a small graphical display element having the appearance of a sphere.
- [7] *Sullivan* (US Pat. No. 5,737,557 A) for teaching a variety of operations that apply to the collective properties of the set of items as a whole through pie menus.
- [8] *Vayda et al.* (US Pat. No. 5,745,717 A) for teaching a graphical menu providing simultaneous multiple command selection.
- [9] *Anderson et al.* (US Pat. No. 5,828,360 A) for teaching an apparatus for handling objects such as documents and tools where a menu of options displayed, which options are placed in a curved band.
- [10] *Sommers et al.* (US Pat. No. 5,940,076 A) for teaching different options/features displayed in user selectable fields which are located along an arc.
- [11] *Perttunen* (US Pat. No. 6,359,635 B1) for teaching multilayer Pie and Radial Menus.
- [12] *Baudel et al.* (US Pat. No. 6,377,240 B1) for teaching radial control menus in graphic editing.
- [13] *Selker* (US Pre-grant Pub. 2002/0122072 A1) for teaching a pie menu GUI.
- [14] *Leavitt et al.* (US Pat. No. 6,918,091 B2) for teaching a pie menu having a user definable interface.
- [15] *J. Callahan, D. Hopkins, M. Weiser, B. Shneiderman*, "An empirical comparison of pie vs. linear menus" 1988, Proceedings of the SIGCHI conference on Human factors in computing systems.
- [16] *Mark A. Tapia, Gordon Kurtenbach*, "Some design refinements and principles on the appearance and behavior of marking menus" 1995, Proceedings of the 8th annual ACM symposium on User interface and software technology.
- [17] *Gordon Kurtenbach, William Buxton*, "The limits of expert performance using hierarchic marking menus" 1993, Proceedings of the SIGCHI conference on Human factors in computing systems.
- [18] *Gordon Kurtenbach, William Buxton*, "User learning and performance with marking menus" 1994, Proceedings of the SIGCHI conference on Human factors in computing systems: celebrating interdependence.
- [19] IBM Technical Disclosure Bulletin, "Extended Pie Menu," Feb. 1994, IBM Corp., vol. 37, No. 02B, p. 397.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

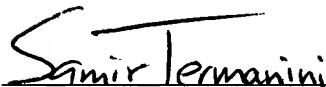
15. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Samir Termanini at telephone number is (571) 270-1047. The Examiner can normally be reached from 9 A.M. to 6 P.M., Monday through Friday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Stephen S. Hong can be reached on (571) 272-4124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

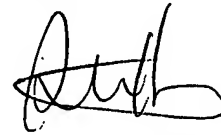
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR

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only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Samir Termanini  
Patent Examiner  
Art Unit 2178



STEPHEN HONG  
SUPERVISORY PATENT EXAMINER